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THE FULL FAITH AND CREDIT CLAUSE OF THE FEDERAL CONSTITUTION

By THOMAS J. O'NEIL

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof." (Art. 4, Sec. 1, of the Federal Constitution.)

This section, as well as most other sections of the Constitution, has invoked varying opinions evidenced by conflicting decisions as to the interpretation to be placed on this particular section of the Constitution.

In order to understand the nature and effect of the full faith and credit clause, it is necessary that one consider the history as to this section immediately preceding and following the adoption and ratification of the Federal Constitution.

Prior to the adoption of the "Articles of Confederation" by the colonies, the courts of each colony, in the absence of a statute providing otherwise, regarded the judgments of the courts of the other colonies as foreign judgments, and so only prima facie evidence of the matter adjudged. Therefore such judgments could be re-examined on their merits in the colony in which they were sued on. When "The Articles of Confederation" were adopted, the framers of those historical articles realized that the judgments of each colony must be allowed greater force in the other colonies, so the following clause was introduced in the Articles, "Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other State." As the Articles did not provide for the authenticationof the records, acts, and judicial proceedings, the framers of the Federal Constitution inserted the following clause, "Congress may by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved." Pursuant to this power the first Congress in 1790 passed an act providing for the method of authentication, and in 1804 another act was passed.

The question of the effect of the constitutional provision and of the acts enacted pursuant to it, caused much conflict of opinion. Many of the courts in deciding cases involving the question held that the clause and acts were merely intended to provide a means of authentication and proof of records and judicial proceedings of the other states, and so did not intend to confer on the judgments of other states any greater rights than they were accorded at common law, and consequently, such judgments were not conclusive but prima facie evidence of the matter adjudged.[1]

In 1813 the United States Supreme Court decided[2] that the judgment of a State court was to be conclusive in a sister state providing the court which rendered the decision had jurisdiction of the person of the defendent and of the subject matter and the judgment was otherwise valid.[3] Therefore any judgment rendered by a court having no jurisdiction of the person or of the subject matter or both may be impeached in another state for the lack of such jurisdiction.[4] So in order to render a judgment in personam which will be entitled to full faith and credit, the court making the decision must have jurisdiction over the person of the defendent by means of personal service within its limits or by the voluntary appearance of the defendant.[5] It is only when the property of a non-resident or absent defendant is brought under the control of the court before the time of the action or where his assent to a different mode of service is given in advance that the court has the jurisdiction to impose a decree in personam against him without personal service of process on him or his voluntary appearance in the action.[6] It is generally held that when a resident is temporarily absent from the state, substituted service, as required by statute may be had on the defendant to entitle the decree to full faith and credit.[7] The United States Supreme Court, though it has not expressed a definite opinion, has intimated that such service may be valid,

1 Peck V. Williamson, 10,896 Fed. Cas.
2 Mills V. Duryee, 7 Cranch 481.
3 Thompson V. Whitman, 21 L.ed. 879.
4 Thompson V. Whitman, supra; Christmas V. Russel, 18 L.ed. 475.
5 Settlemier V. Sullivan 97 U. S. 444.
6 Pennoyer V. Neff, 95 U. S. 714; Thompson V. Thompson, 226 U. S. 551.
7 Huntley V. Baker, 33 Hun. (N. Y.) 578; Sturgis V. Fay, 16 Ind. 429.

when served in the manner required by statute on a resident temporarily without the state.[8]

Three conditions are necessary to give a court jurisdiction in personam over a foreign corporation to entitle such decree to full faith and credit. First ,it must appear that the corporation was engaged in business in the state where the process was served on its agent; second, that the business was transacted by an agent or officer appointed by or representing the corporation in that state, third, the existence of some local law making such corporation amenable to suit there as a condition express or implied of doing business in the state.[9]

The constitutional provision as to full faith and credit is a rule of evidence only and does not require that an action shall be allowed on such judgments regardless of other objections to its maintenance.[10]

The new York Code denies the use of the state courts in cases between foreign corporations where the cause of action arises outside the state, even though the cause of action is a judgment obtained in another state. In the Anglo-American Provision Co. v. Davis Provision Co.[11] the United States Supreme Court held that the Code provision did not violate the full faith and credit clause on the ground that the state did not have to provide a court in which to bring the action, that is was only after a suit had been brought in the state court that the parties could claim the protection of the full faith and ccredit clause.

It has been held that a judgment of a sister state cannot be impeached on the ground of fraud.[12] North Carolina has held that though the judgment cannot be impeached at law on the ground of fraud, yet in equity proof of the fraud would bar an action on the judgment.[13] However, it is now generally held that the provision does not prevent the attacking of a judgment of a sister state on the grouds of manifest fraud.[14]

A judgment enforceable in the State where rendered must be given effect in another State under this clause, although the

8 McDonald V. Mabee, 243 U. S. 90.
9 Ill. Statutes, Chap. 32, Par. 87; Kane V. New Jersey, 246 U. S. 160; International Harvester Co. V. Kentucky, 234 U. S. 579.
10 Wisconsin V. Pelican Ins.C o., 127 U. S. 265; also see Huntington V. AtAtrill, 146 U. S. 657.
11 24 Sup. Ct. Rep. 92.
12 Christmas V. Russel, 18 L.ed. 475.
13 55 S. E. 371.
14 American Expr. Co. V. Mullins, 212 U. S. 311..

modes of procedure to enforce its collection may not be the same in both States.[15] In Fauntleroy v. Lum[16] an aciton was brought in Mississippi on a judgment recovered in Missouri. The original cause of action arose in Mississippi out of a transaction which was illegal and void in Mississippi but valid in Missouri where the plaintiff recovered judgment while the defendant was temporarly in that State. On appeal to the United State Supreme Court it was held that "records and judicial proceedings shall have such faith and credit given to them as they have by law or usage in the courts of the State whence the said records are or shall be taken, and the validity of the action having been determined in Missouri that decision was conclusive on that question." It seems almost impossible to reconcile the above decision with other Supreme Court decisions which have held that a State does not have to give full faith and credit to the judgment rendered in a sister State when it is contrary to the laws or public policy of the State where sued on.[17]

The duty to give full force and effect to the Constitution of a State is as obligatory as the similar duty in respect to judicial proceedings of that State.[18]

A judgment in rem pronouced by a court having jurisdiction determines the status of the thing adjudgeg against all the world.[19] The probate of a will is a proceeding in rem and the judgment of the Court thereon is conclusive.[20] However, it must be understood that judgments in actions in rem as well as judgments in actions in personam can be impeached on the ground of lack of jurisdiction.[21]

The full faith and credit to be given to divorce cases has led to such innumerable and conflicting decisions which at one time produced an almost chaotic condition. This phase has not as yet reached the point of stability which is necessary for perfect law, but from the many and varied decisions there have evolved several principles which have been enforced more or less strictly. Much of the uncertainty regarding the effect to be

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15 Sistare V. Sistare, 218 U. S. 1.
16 210 U. S. 230.
17 Finney V. Guy, 189 U. S. 340; Andrews V. Andrews, 188 U. S. 14.
18 Smithsonian Institute V. St. John, 214 U. S. 19.
19 Baduc's Syndics V. Nicholson A La. 81.
20 Hancock Nat. Bank V. Farnum, 176 U. S. 640, 2 Black, Judgments Secs. 635-38.
21 Andrews V. Andrews, 188 U. S. 14.

given to divorce decrees has been removed by extending the rules of comity between the various states. The leading case on this question is Haddock v. Haddock,[22] and the principles of that case have been upheld. In that case it was decided that a decree of divorce will be entitled to full faith and credit only where the parties have a bona fide domicile in the State in which the action is brought and the defendant is personally served with the process, or where one party has a bona fide domicile in a State and obtains personal service of process on the defendant while that party is within the Staet, or where the divorce is granted in the State of the matrimonial domicile which is also the domicile of the innocent party and where notice by publication is given to the other party if his residence is unknown or he is outside the jurisdiction of the court. Under this view the question as to what constitutes the matrimonial domicile has led to much difference of opinion. There are two theories as to where that domicile exists, some courts holding that it is the State in which the parties were married, and other courts holding that it is the State in which the parties last lived together as man and wife. As far as the writer knows there is one question regarding the matrimonial domicile which as yet has never been adjudicated. That is where A marries B in New York and they then become domiciled in Indiana. A is guilty of some fault which constitutes a ground for divorce, and thereupon becomes domiciled in Illinois, while B becomes domiciled in Ohio and there sues for a divorce and gives notice by publication to A and secures a divorce. Is such divorce entitled to full faith and credit? Does the matrimonial domicile follow the innocent party? A statement is made in the Harvard Law Review in discussing the case of Haddock v. Haddock that the matrimonial domicile does follow the innocent party, but no citations are given to substantiate this theory. The Haddock case has been compared and contrasted with Atherton v. Atherton.[23] These cases though not in strict accordance are not irreconcilable. In the Atherton case the husband secured a divorce in Kentucky where the parties last resided as man and wife on notice by publication to the wife who was at that time domiciled in New York. The wife then sued

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22 201 U. S. 562.
23 181 U. S. 155.

in New York for a divorce and the husband appeared and pleaded the Kentucky decree. The Supreme Court of the United States held that the divorce having been obtained in the State where the matrimonial domicile existed, and the Kentucky court having found that the husband was the innocent party, that the question as to who was the innocent party was conclusively settled by that court, and the Kentucky decree entitled to full faith and credit in New York.

There have been three varied lines of decisions as to the effect of divorce decrees. Some courts hold that the divorce affects the status of the parties and so the proceeding is one in rem and where the court acquires jurisdiction over the res, namely, the marriage relationship, the decree, if valid, where rendered, is valid everywhere, even in the absence of actual notice to, or appearance on the part of the defendant.[24] Another line of cases hold that the divorce proceeding is in personam, and the decree not binding on a defendant domiciled outside the jurisdiction of the court, when there can be no personal service on him and he does not appear.[25] Then there are courts which decide that the divorce proceeding is quasi in rem. These courts hold that personal service on a non-resident defendant or appearance by him is not absolutely necessary in order that a divorce may be binding in another State, but they require that the best possible notice be given.[26]

As a general proposition it may be stated that a domicile of some sort, within the State granting the divorce, is necessary to give jurisdiction to that court.[27]

Another interesting question which arises under the full faith and credit clause is the finality of the judgment rendered in the sister State. It is well settled that this clause applies only to judgments which are final, and does not apply to those which are interlocutory, intermediate, or which can be changed at will by the court granting the decree.[28] The effect to be given to decrees for alimony has provided most of the controversy under this phase of the full faith and credit clause. If the decree provides

24 In Re Jones' Estate, 33 Pac. 1122 (Cal.); Chiever V. Wilson, 76 U. S. 108.
25 People V. Baker, 76 N. Y. 78.
26 Thomas V. King, 61 S. W. 983 (Tenn.); Burlen V. Shannon, 115 Mass. 438.
27 Bell V. Bell, 181 U. S. 175.
28 177 Fed. 994, 110 Pac. 756 (Okla.); 263 S. W. 22 (Ky.).

for a fixed and certain sum, the judgment is entitled to full faith and credit, but if that sum may be increased, decreased, or annulled by the court granting the judgment for alimony, then the judgment is not final and not entitled to full faith and credit.[29] When the decree of the sister state provides for the payment of alimony in certain fixed installments, all installments due, when the action is brought in the other state, are final and entitled to full faith and credit, providing the court which granted the judgment does not have the power to change that judgment regarding the installments already due, though it may have the right to change those which shall thereafter become due.[30]

As has been stated before, in order to render a judgment which will be entitled to full faith and credit in other states, it is essential that the court granting the judgment have jurisdiction over the subject matter. This proposition, therefore, brings up the question of the effect to be given to equitable decrees rendered in a state in which the land is not situated and affecting the title or interest in that land, and also as regards divorce decrees awarding land situated in another state to one of the parties. It is an elementary principle of law that all right, title, and interest in realty can be determined only by the state in which the real estate is situated.[31] Therefore a decision in rem, such as one declaring void a deed of land in another state, is of no effect whatever, since the court lacks jurisdiction over the land.[32] Where a court of equity has jurisdiction over both parties it can compel the defendant to make a deed to land in another state, and such deed will be recognized in the state in which the land is situated, and such judgment is entitled to full faith and credit,[33] but if in such a case the defendant refuses to make the deed and gets beyond the jurisdiction of the court so that he cannot be compelled to make one, a deed made by the entitled to full faith and credit.[34] The same rules have been adopted where the action is one of divorce instead of an action commissioner of the equity court pursuant to the decree is not

29 148 Fed. 576; 195 Ill. Appl. 350; 190 N. Y. S. 369.
30 Sistare V. Sistare, 218 U. S. 1; 190 N. W. 542 (Minn.); 202 P. 211 (Utah).
31 U. S. V. Crosby, 3 L. ed. 287.
32 Carpenter V. Strange, 141 U. S. 87.
33 Burnley V. Stephenson, 24 Ohio St. 174.
34 Burnley V. Stephenson, supra; Fall V. Eastin, 215 U. S. 1.

in equity.[35] In Matson v. Matson[36] a divorce was rendered in Washington, both parties being present, and the defendant was ordered to convey to the plaintiff land in Iowa. The defendant refused to convey the land, and went to Iowa and fraudulently sold the land to a party having knowledge of the Washington judgment for practically no consideration. The plaintiff in the Washington suit brought action in an Iowa court to set the conveyance aside, obtaining jurisdiction of her former husband and of the person who purchased from him. The Iowa court held that the Washington decree did not, of itself, operate to transfer the land to the plaintiff, but that the decree was sufficient and proper basis for the action brought in Iowa.

It has been held that the courts of one state having jurisdiction over the person of the defendant can enjoin him from bringing or prosecuting an action in another state, and such injunction is entitled to full faith and credit in the other states.[37] By the better view the full faith and credit clause does not demand that the courts of other states give the doctrines of a sister state extraterritorial effect.[37]

The full faith and credit clause does not extend to judgments, acts, and judicial proceedings of a foreign country or state.[39] The effect which shall be given to such foreign judgments, acts, and judicial proceedings is determined by treaties of the United States with the foreign country or state or by the international principles of comity. In Hilton v. Guyot[40] a suit was brought in a New York court on a judgment recovered against Americans in France. On appeal the United States Supreme Court held that since France considered the judgments rendered in the United States as only prima facie evidence of the matter adjudicated, the United States also were only bound to consider a judgment rendered in France as prima facie evidence. In some states foreign judgments have been given conclusive effect.[41]

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35 Fall V. Eastin, supra; Bullock V. Bullock, 52 N. J. Eq. 561.
36 186 Ia. 607.
37 Cole V. Cunningham, 133 U. S. 107.
38 Shelton V. Johnson, 4 Sneed (Tenn.) 467.
39 Aetna Life Ins. Co. V. Trembley, 223 U. S. 185.
40 159 U. S. 113.
41 Eastern Township Bank V. Beebe & Bo., 53 Vt. 177; McDonald V. Grand Trunk R.R. Co., 71 N. H. 448.

Decisions of the federal courts are entitled to full faith and credit in state courts, not because of the section of the Federal Constitution, but because of the Acts which have been adopted pursuant to it.[42] Likewise decisions of state courts are entitled to full faith and credit in the federal courts.[43]

A judgment founded on a strictly penal statute or one which is penal of fiscal in the internation sense is not entitled to full faith and credit in another state.[44] The question whether a statute of one state which is in some aspects penal, is penal in the international sense so that it cannot be enforced in another state depends on the question whether its purpose is to punish an offense against the public justice of the state or to afford a private remedy to a person injured by the act. If it is the latter then it is not penal in the international sense, and a judgment validly rendered thereon, is entitled to full faith and credit in the other states.[45]

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42 Metcalf V. Watertown, 153 U. S. 671; Crescent Live Stock Co. V. Butchers' Union, 120 U. S. 141.
43 Swift V. McPherson, 232 U. S. 51; U. S. V. Mason, 213 U. S. 115; Cooper V. Newell 173 U. S. 567.
44 Wisconsin V. Pelican Ins. Co., 127 U. S. 265; Huntington V. Attrill, 146 U. S. 657; Great Western Mach. Co. V. Smith, 87 Kan. 331.
45 103 U. S. 11, Huntington V. Attrill, supra.